

REMARKS

Applicant has carefully reviewed the first Office Action mailed November 3, 2008. In response, claims 13-15 and 17-25 are pending. Compared to prior versions, claims 13-15 and 17-23 are currently amended, claim 16 is cancelled and claims 24 and 25 are new while claims 1-12 were previously cancelled. Upon reviewing the foregoing amendments and the following remarks, it is believed the Examiner will agree that the application is in condition for allowance.

Preliminarily, the Examiner objects to the specification because he contends that it fails "to provide proper antecedent basis for the claimed subject matter." *See Office Action dated 11-03-2008, p. 2.* Namely, the Examiner identifies the limitations in claim 19 ("straps which are heat-welded in place") and claim 21 ("the containers are interlinked with each other along the line of the wall by support webbing/strapping") as lacking support in the specification. Contrary to the Examiner's position, the specification provides sufficient support for the claimed subject matter in claims 19 and 21. Specifically, paragraph [0006] provides that "the internal walls of the walled containers may be interconnected by straps at strategic locations, which may conveniently be heat-welded in place." Further, paragraph [0007] provides that the containers "may conveniently interlinked with each other along the line of the wall by support webbing/strapping, such as through the use of strips of Velcro® webbing or strapping stitched to each one." Accordingly, the specification provides a proper antecedent basis for these claims and the Examiner's objection to the specification should be withdrawn.

In addition, the Examiner rejects claims 13-23 under 35 U.S.C. § 112, second paragraph, as being indefinite. As amended, the language "directly or indirectly" has been deleted from claim 13 to overcome the Examiner's indefiniteness rejection. Further, the language "further characterized in that" has been deleted from claims 14, 15 and 17-23 to overcome the Examiner's indefiniteness rejection. The term "means" also has been deleted from claims 13 and 15 to overcome the 35 U.S.C. § 112, sixth paragraph rejection. Finally,

claim 23 has been amended to delete the phrase “e.g. a fire retardant/suppressant or some other” to overcome the Examiner’s rejection.

With respect to claim 15, the Examiner contends that “it is not understood as to how the support means can accurately [be] described as being ‘generally triangular section’ when structure 5 has no apex as required by a triangular configuration.” *See Office Action dated 11-03-2008, p.2.* The Examiner’s rejection is unclear because claim 15 does not recite the language “generally triangular section.” Rather, the language “generally triangular section” is recited in claim 14 and relates to the walled containers 1, 2 which are “connected to an inflatable base to form in combination therewith a structure of generally triangular section when inflated.” As shown in Figure 1, the walled containers and base in combination clearly form “a structure of generally triangular section” as required in claim 14. As amended, claim 15 now requires that “the support cushion is frusto-triangular in section” which is also supported by Figure 1. Thus, the Examiner’s rejection of claim 15 as indefinite should be withdrawn.

Turning to the merits, claims 13-18 and 20-23 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0035034 to Quade (“Quade”). Further, claim 19 stands rejected under 35 U.S.C. § 103(a) as being obvious over Quade in view of U.S. Patent No. 5,168,603 to Reed (“Reed”). Finally, claims 13, 15, 17, 18 and 20-23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,607,655 to Wagner et al. (“Wagner”).

An “anticipation” rejection under Sections 102(b) and/or 102(e) requires “strict identity” between the prior art invention and the one set forth in the claim. *See Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (holding that an anticipating reference must describe all claimed aspects of the invention). The “mere possibility” that the claimed structure exists in the reference is inadequate to meet the “strict identity” requirement for a proper anticipation rejection. *See Continental Can Company USA v. Monsanto Company*, 948 F.2d 1264, 1269, 20 USPQ2d 1746 (Fed. Cir. 1991) (holding that

anticipation “may not be established by probabilities or possibilities”). Thus, Quade and Wagner must expressly or inherently disclose the exact same invention, arranged precisely as required in the claims, in order for the rejections of claims 13-18 and 20-23 and 13, 15, 17, 18 and 20-23 to be sustained, respectively.

As amended, independent claim 13 requires among other elements, a shock suppression apparatus including a pair of inflatable and water-fillable spaced-apart wall containers “wherein the walls of the walled containers are interconnected by drop stitches so as to prevent or inhibit outward bulging thereof in response to the weight of water contained therein.” As noted in the specification and described in more detail in GB 2,374,625 (which is incorporated by reference in the application), “drop stitches” are parallel skins interconnected by a dense uniform “forest” of equal length filaments such that if the skins are urged apart such as when they form opposite sides of a bag filled with water, the stitches remain flat and parallel rather than bulging.

Although the Examiner contends that Quade discloses all of the elements of claim 13 (and previously claim 16 from which the “wherein” clause requiring drop stitches was originally presented before being incorporated into amended claim 13), the Examiner fails to identify where Quade teaches the use of drop stitches for preventing or inhibiting outward bulging of the walls. Rather, the Examiner simply ignores the requirement of “drop stitches” in making the anticipation rejections. Nowhere in Quade does it mention that the walls of the walled containers are interconnected by drop stitches. Accordingly, Quade fails to teach all of the required elements in independent claim 13. Similarly, the other references cited by the Examiner fail to teach or suggest the use of drop stitches to prevent or inhibit outward bulging of the walls as required in claim 13. Namely, Wagner was not even cited by the Examiner for anticipating previous claim 16 (requiring the use of drop stitches) and the Examiner merely cited Reed for teaching Velcro straps in rejecting claim 19. Since none of the references teach all of the required elements of claim 13, the rejection should be withdrawn.

The Examiner also rejects claims 14-18 and 20-23 and 15, 17, 18 and 20-23 as allegedly anticipated by Quade and Wagner, respectively. However, these claims depend upon independent claim 13 and are also believed to be allowable. *See Trintec Industries, Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1296, 63 USPQ2d 1597 (Fed. Cir. 2002) (noting that if an independent claim is not anticipated by prior art, then its dependent claims, which necessarily include the limitations of the independent claim, are not anticipated either). Thus, claims 14, 15, 17, 18 and 20-23 should be allowable based upon the reasoning of *Trintec Industries, supra*.

With respect to the obviousness rejection of claim 19, the Examiner contends that Quade discloses all of the claimed aspects of the shock suppression apparatus except for "Velcro straps that are heat-welded place." *See Office Action dated 11-03-2008, p. 4*. Nevertheless, the Examiner cites Reed for teaching Velcro straps that are heat-welded in place and concludes that "[i]t would have been obvious...to apply the teachings of Reed to the Quade shock suppression device and have a shock suppression device with a different type of attachment means." *See id.*

As discussed above, Quade does not teach that the walls of the walled containers are interconnected by drop stitches to prevent or inhibit outward bulging of the walls as required in claim 19 based upon its dependency on claim 13. Moreover, Reed does not supply the missing teaching from Quade. Instead, Reed is merely cited by the Examiner for disclosing the use of Velcro straps. Thus, the cited references do not disclose all of the limitations as the Examiner contends and the obviousness rejection should be withdrawn.

Finally, Applicant has added new claims 24 and 25, which are believed to be allowable. In particular, new claim 24 is dependent upon claim 13 and should be allowable based upon the reasoning of *Trintec Industries, supra*. New independent claim 25 requires (among other elements) a shock suppression wall comprising a plurality of shock suppression apparatus including a pair of inflatable and water fillable spaced-apart walled containers "wherein the walls of the walled containers are interconnected by drop stitches

so as to prevent or inhibit outward bulging thereof.” As discussed above, none of the references disclose the use of “drop stitches” and, therefore, claim 25 should be held allowable.

In light of the foregoing, it is now believed that all pending claims are allowable. If any issues remain, the Examiner is encouraged to contact the Applicant’s counsel at the telephone number listed below in order to reduce costs and expedite the prosecution of this patent application. Also, to the extent any fees are due for processing this response, the undersigned authorizes their deduction from Deposit Account 11-0978.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Andrew D. Dorisio', is written over the firm name.

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